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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/018,769	12/21/2001	Sandrine Decoster	05725.0993	2464
22852 7590 10/29/2007 FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413			EXAMINER YU, GINA C	
			ART UNIT 1617	PAPER NUMBER
			MAIL DATE 10/29/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/018,769

Applicant(s)

DECOSTER ET AL.

Examiner

Gina C. Yu

Art Unit

1617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 16 May 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 18,20-28 and 30-51 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 18,20-28 and 30-51 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>5/16/2007</u> . | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

Receipt is acknowledged of amendment filed on May 16, 2007. Claims 18, 20-28 and 30-51 are pending. Claim rejection made under 35 U.S.C. § 103, as indicated in the previous Office action dated January 16, 2007, is maintained for the reasons of record.

#### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

**Claims 18, 20-28, and 30-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mitsumatsu et al. (WO 99/13830) ("Mitsumatsu") in view of Oshima (JP401009916A) and Sebag et al. (WO 98/03155) ("Sebag").**

The rejection is maintained for the reasons of record.

#### ***Response to Arguments***

Applicant's arguments with respect to claims 18, 20-28, and 30-51 have been considered but are unpersuasive.

Applicants argue that the examiner's reasons of obviousness to combine Mitsumatsu and Oshima are factually flawed, pointing out that the weight amounts of stearyl alcohol and behenyl alcohol used in Mitsumatsu examples are not within the weight ranges of the fatty alcohols as disclosed by the Oshima reference. Examiner views that the combination is still obvious and the rejection should be maintained because the weight amounts of stearyl and behenyl alcohols of the two similar prior arts are within obvious ranges, and particularly because Oshima teaches using the two

compounds with specific weight amount and ratio with the specific cosmetic advantages thereof. A skilled artisan still would have had a sufficient motivation to modify the teachings of the Mitsumatsu by using the amount of the fatty alcohols as taught by Oshima in expectation of enhancing the cosmetic properties and stability of the shampoo.

Applicants also point out that the advantages of the Oshima shampoo is due to the whole composition rather than the combination of the fatty alcohols. In response, examiner respectfully points out that Mitsumatsu already teaches in general that stearyl and behenyl alcohols can be used in a mixture, an Oshima provides a specific ratio and weight range that can be used as a mixture, which would have supplied motivation to the routineer to make the claimed invention with an expectation of successfully producing a stable composition. Examiner also points out that the scope of the claimed composition is open to include other ingredients not recited in the instant claims, such as the other ingredients of Oshima shampoo that might render the advantageous properties to improve the Mitsumatsu invention. Examiner also views that the skilled artisan would have had a reasonable expectation of success in making a stable and cosmetically advantageous shampoo product by modifying the Mitsumatsu product by adding the ingredients of the Oshima reference, such as ampholytic surfactants or polypeptide, since Mitsumatsu teaches that both cationic and anionic surfactants are used, and further teaches incorporating additional cosmetic ingredients to the composition, such as hydrolyzed collagen, which is a hair conditioning protein.

With respect to the application of the Sebag reference, applicants assert that Mitsumatsu does not suggest **substituting** optical brighteners with opacifier/pearlescent component due to the functional differences of the two. However, the present rejection is based on the notion that **incorporating** an opacifier/pearlescent component into the Mitsumatsu product or the combined composition of Mitsumatsu/Oshima would have been obvious. The skilled artisan would have had a reasonable expectation of successfully producing an improved shampoo composition with the combined cosmetic effects of triazole optical brightener of Mitsumatsu and the pearlescent effect of the dialkyl ether of Sebag.

### ***Conclusion***

No claims are allowed.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gina C. Yu whose telephone number is 571-272-8605. The examiner can normally be reached on Monday through Friday, from 8:00AM until 5:30 PM..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Gina C. Yu  
Patent Examiner

A handwritten signature in black ink, appearing to read 'S. Padmanabhan', with a stylized flourish at the end.

SREENI PADMANABHAN  
SUPERVISORY PATENT EXAMINER